

AMENDED IN ASSEMBLY APRIL 13, 2016

AMENDED IN ASSEMBLY MARCH 29, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2899

**Introduced by ~~Committee on Labor and Employment~~ (Assembly
Members ~~Assembly Member~~ Roger Hernández ~~(Chair)~~, Chu,
Low, McCarty, and Thurmond)**

March 1, 2016

An act to amend Section 1197.1 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 2899, as amended, ~~Committee on Labor and Employment~~ Roger Hernández. Minimum wage violations: challenges.

Under existing law, any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by applicable state or local law or an order of the Industrial Welfare Commission, is subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable specified penalties, as provided. Existing law provides notice and hearing requirements under which a person against whom a citation has been issued, can request a hearing to contest proposed assessment of a civil penalty, wages, liquidated damages, and any applicable penalties. Existing law further provides that after a hearing with the Labor Commissioner, a person contesting a citation may file a writ of mandate, within 45 days, with the appropriate superior court.

This bill would require a person seeking a writ of mandate contesting the Labor Commissioner's ruling, to post a bond with the Labor Commissioner as specified, in an amount equal to the unpaid wages assessed under the citation, excluding penalties. The bill would require that the bond be issued in favor of the unpaid employees, and ensure that the person seeking the writ makes prescribed payments pursuant to the proceedings.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1197.1 of the Labor Code is amended to
2 read:

3 1197.1. (a) Any employer or other person acting either
4 individually or as an officer, agent, or employee of another person,
5 who pays or causes to be paid to any employee a wage less than
6 the minimum fixed by an applicable state or local law, or by an
7 order of the commission shall be subject to a civil penalty,
8 restitution of wages, liquidated damages payable to the employee,
9 and any applicable penalties imposed pursuant to Section 203 as
10 follows:

11 (1) For any initial violation that is intentionally committed, one
12 hundred dollars (\$100) for each underpaid employee for each pay
13 period for which the employee is underpaid. This amount shall be
14 in addition to an amount sufficient to recover underpaid wages,
15 liquidated damages pursuant to Section 1194.2, and any applicable
16 penalties imposed pursuant to Section 203.

17 (2) For each subsequent violation for the same specific offense,
18 two hundred fifty dollars (\$250) for each underpaid employee for
19 each pay period for which the employee is underpaid regardless
20 of whether the initial violation is intentionally committed. This
21 amount shall be in addition to an amount sufficient to recover
22 underpaid wages, liquidated damages pursuant to Section 1194.2,
23 and any applicable penalties imposed pursuant to Section 203.

24 (3) Wages, liquidated damages, and any applicable penalties
25 imposed pursuant to Section 203, recovered pursuant to this section
26 shall be paid to the affected employee.

27 (b) If, upon inspection or investigation, the Labor Commissioner
28 determines that a person has paid or caused to be paid a wage less

1 than the minimum under applicable law, the Labor Commissioner
2 may issue a citation to the person in violation. The citation may
3 be served personally or by registered mail in accordance with
4 subdivision (c) of Section 11505 of the Government Code. Each
5 citation shall be in writing and shall describe the nature of the
6 violation, including reference to the statutory provision alleged to
7 have been violated. The Labor Commissioner ~~promptly~~ shall
8 *promptly* take all appropriate action, in accordance with this
9 section, to enforce the citation and to recover the civil penalty
10 assessed, wages, liquidated damages, and any applicable penalties
11 imposed pursuant to Section 203 in connection with the citation.

12 (c) (1) If a person desires to contest a citation or the proposed
13 assessment of a civil penalty, wages, liquidated damages, and any
14 applicable penalties imposed pursuant to Section 203 therefor, the
15 person shall, within 15 business days after service of the citation,
16 notify the office of the Labor Commissioner that appears on the
17 citation of his or her appeal by a request for an informal hearing.
18 The Labor Commissioner or his or her deputy or agent shall, within
19 30 days, hold a hearing at the conclusion of which the citation or
20 proposed assessment of a civil penalty, wages, liquidated damages,
21 and any applicable penalties imposed pursuant to Section 203 shall
22 be affirmed, modified, or dismissed.

23 (2) The decision of the Labor Commissioner shall consist of a
24 notice of findings, findings, and an order, all of which shall be
25 served on all parties to the hearing within 15 days after the hearing
26 by regular first-class mail at the last known address of the party
27 on file with the Labor Commissioner. Service shall be completed
28 pursuant to Section 1013 of the Code of Civil Procedure. Any
29 amount found due by the Labor Commissioner as a result of a
30 hearing shall become due and payable 45 days after notice of the
31 findings and written findings and order have been mailed to the
32 party assessed. A writ of mandate may be taken from this finding
33 to the appropriate superior court. The party shall pay any judgment
34 and costs ultimately rendered by the court against the party for the
35 assessment. The writ shall be taken within 45 days of service of
36 the notice of findings, findings, and order thereon.

37 (3) As a condition to filing a petition for a writ of mandate, the
38 petitioner seeking the writ shall first post a bond with the Labor
39 Commissioner equal to the total amount of any minimum wages,
40 liquidated damages, and overtime compensation that are due and

1 owing as determined pursuant to subdivision (b) of Section 558,
2 as specified in the citation being challenged. The bond amount
3 shall not include amounts for penalties. The bond shall be issued
4 by a surety duly authorized to do business in this state, shall be
5 issued in favor of unpaid employees, and shall ensure that the
6 petitioner makes payments as set forth in this paragraph. If a
7 decision is entered which affirms or modifies the amounts for
8 minimum wages, liquidated damages, or overtime compensation,
9 the petitioner shall pay the amounts owed for the specified items
10 included in a clerk's judgment entered under subdivision (f) based
11 on the decision, or pursuant to a court judgment in a writ of
12 mandate proceeding under paragraph (2). If the request for a writ
13 is withdrawn or dismissed without entry of judgment, the petitioner
14 shall pay the amounts owed for the specified items pursuant to the
15 citation, or the administrative decision if a pending writ of mandate
16 is dismissed prior to a court decision, unless the parties have
17 executed a settlement agreement for payment of some other
18 amount. In the case of a settlement agreement, the petitioner shall
19 pay the amount he or she is obligated to pay under the terms of
20 the settlement.

21 (d) A person to whom a citation has been issued shall, in lieu
22 of contesting a citation pursuant to this section, transmit to the
23 office of the Labor Commissioner designated on the citation the
24 amount specified for the violation within 15 business days after
25 issuance of the citation.

26 (e) When no petition objecting to a citation or the proposed
27 assessment of a civil penalty, wages, liquidated damages, and any
28 applicable penalties imposed pursuant to Section 203 is filed, a
29 certified copy of the citation or proposed civil penalty, wages,
30 liquidated damages, and any applicable penalties imposed pursuant
31 to Section 203 may be filed by the Labor Commissioner in the
32 office of the clerk of the superior court in any county in which the
33 person assessed has or had a place of business. The clerk,
34 immediately upon the filing, shall enter judgment for the state
35 against the person assessed in the amount shown on the citation
36 or proposed assessment of a civil penalty, wages, liquidated
37 damages, and any applicable penalties imposed pursuant to Section
38 203.

39 (f) When findings and the order thereon are made affirming or
40 modifying a citation or proposed assessment of a civil penalty,

1 wages, liquidated damages, and any applicable penalties imposed
2 pursuant to Section 203 after hearing, a certified copy of these
3 findings and the order entered thereon may be entered by the Labor
4 Commissioner in the office of the clerk of the superior court in
5 any county in which the person assessed has property or in which
6 the person assessed has or had a place of business. The clerk,
7 immediately upon the filing, shall enter judgment for the state
8 against the person assessed in the amount shown on the certified
9 order.

10 (g) A judgment entered pursuant to this section shall bear the
11 same rate of interest and shall have the same effect as other
12 judgments and be given the same preference allowed by the law
13 on other judgments rendered for claims for taxes. The clerk shall
14 make no charge for the service provided by this section to be
15 performed by him or her.

16 (h) In a jurisdiction where a local entity has the legal authority
17 to issue a citation against an employer for a violation of any
18 applicable local minimum wage law, the Labor Commissioner,
19 pursuant to a request from the local entity, may issue a citation
20 against an employer for a violation of any applicable local
21 minimum wage law if the local entity has not cited the employer
22 for the same violation. If the Labor Commissioner issues a citation,
23 the local entity shall not cite the employer for the same violation.

24 (i) The civil penalties provided for in this section are in addition
25 to any other penalty provided by law.

26 (j) This section shall not apply to any order of the commission
27 relating to household occupations.

28 (k) This section does not change the applicability of local
29 minimum wage laws to any entity.